

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #3	CCRB Case #: 201807286	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury		
Incident Date(s) Sunday, 09/02/2018 4:00 AM	Location of Incident: [REDACTED]		Precinct: 67	18 Mo. SOL 3/2/2020	EO SOL 3/2/2020
Date/Time CV Reported Tue, 09/04/2018 12:20 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 09/04/2018 12:20 PM		

[illegible][illegible]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			067 PCT
2. SGT Alan Chau	01257	940986	067 PCT
3. POM John Nemeth	17897	955259	067 PCT
4. LT Michael Spagnuolo	00000	942572	067 PCT
5. POM Miguel Vanbrakle	28743	955616	067 PCT
6. An officer			067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ricardo Martinez	19264	950834	067 PCT
2. POM Mansoor Ali	14037	960148	067 PCT
3. POM Ihab Ginem	11307	962433	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
4. POM Amine Azeddine	20237	958278	067 PCT
5. POM Trevor Neal	2494	955253	067 PCT
6. POM Delio Fernandez	16156	957578	067 PCT
7. POM Pedro Ruiz	27494	932117	067 PCT
8. POF Deirdre Kelleher	17088	957731	067 PCT
9. POM Denis Gamez	07601	949000	067 PCT
10. POM Christophe Goetz	15897	964019	067 PCT
11. SGT Robert Falcone	01052	948950	067 PCT
12. POM Daniel Collura	06593	961705	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Alan Chau	Abuse: Sergeant Alan Chau entered § 87(2)(b) in Brooklyn.	
B. Officers	Discourtesy: Officers spoke discourteously to individuals.	
C. Officers	Force: Officers used physical force against individuals.	
D. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	
E.LT Michael Spagnuolo	Discourtesy: Lieutenant Michael Spagnuolo spoke discourteously to § 87(2)(b)	
F. An officer	Force: An officer used physical force against § 87(2)(b)	
G. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
H.POM John Nemeth	Force: Police Officer John Nemeth used physical force against § 87(2)(b)	
I.SGT Alan Chau	Force: Sergeant Alan Chau used physical force against § 87(2)(b)	
J.SGT Alan Chau	Abuse: Sergeant Alan Chau interfered with § 87(2)(b)'s use of a recording device.	
K.POM Miguel Vanbrakle	Force: Police Officer Miguel Vanbrakle used pepper spray against § 87(2)(b)	
L.POM Miguel Vanbrakle	Force: Police Officer Miguel Vanbrakle used pepper spray against § 87(2)(b)	
M.POM Miguel Vanbrakle	Force: Police Officer Miguel Vanbrakle used pepper spray against § 87(2)(b)	
N.POM Miguel Vanbrakle	Force: Police Officer Miguel Vanbrakle used pepper spray against individuals.	
O.SGT Alan Chau	Abuse: Sergeant Alan Chau authorized a search of § 87(2)(b) in Brooklyn.	
P.SGT Alan Chau	Abuse: Sergeant Alan Chau seized § 87(2)(b)'s property.	
Q. Officers	Force: Officers used physical force against § 87(2)(b)	
R. An officer	Force: An officer used pepper spray against § 87(2)(b)	

Case Summary

On September 4, 2018, § 87(2)(b) and § 87(2)(b) filed this complaint in person at the CCRB on behalf of themselves; § 87(2)(b)'s husband § 87(2)(b), § 87(2)(b)'s sons § 87(2)(b) and § 87(2)(b), § 87(2)(b)'s husband § 87(2)(b), § 87(2)(b) and § 87(2)(b)'s cousins § 87(2)(b) and other unidentified individuals.

On September 2, 2018, at approximately 4:00 AM, officers of the 67th Precinct, led by Sgt. Alan Chau of the 67th Precinct, entered the backyard of § 87(2)(b) in Brooklyn, where a party was taking place (**Allegation A, Abuse of Authority:** § 87(2)(g)). Officers allegedly told civilians to “get the fuck out” of the location and pushed individuals to force them to leave (**Allegation B, Discourtesy:** § 87(2)(g)). **Allegation C, Force:** § 87(2)(g). An officer allegedly told § 87(2)(b) that he could be arrested for assault following an interaction with officers (**Allegation D, Abuse of Authority:** § 87(2)(g)). Lt. Michael Spagnuolo of the 67th Precinct instructed § 87(2)(b) to leave the premises, ultimately stating, “Get the fuck out of the yard now,” (**Allegation E, Discourtesy:** § 87(2)(g)). An officer then allegedly twisted § 87(2)(b)'s arm behind his back, escorted him to the front of the property, and pushed him out of the front yard (**Allegation F, Force:** § 87(2)(g)). The same officer then allegedly said, “Get the fuck out,” (**Allegation G, Discourtesy:** § 87(2)(g)). Simultaneously, PO John Nemeth of the 67th Precinct took § 87(2)(b) to the ground following a physical struggle between him and officers (**Allegation H, Force:** § 87(2)(g)). Shortly thereafter, as § 87(2)(b) attempted to record video of the incident, Sgt. Chau allegedly twisted her arm to force her to stop recording (**Allegation I, Force:** § 87(2)(g)). **Allegation J, Abuse of Authority:** § 87(2)(g). As § 87(2)(b) was arrested and escorted to a police vehicle, PO Miguel Vanbrakle of the 67th Precinct used Oleoresin Capsicum (OC) spray, hereafter referred to as pepper spray, against several individuals in a crowd, including § 87(2)(b) and § 87(2)(b) (**Allegations K-N, Force:** § 87(2)(g)). Sgt. Chau then instructed several officers to search behind a bar area, including inside several containers, and seize all of the alcohol found (**Allegation O, Abuse of Authority:** § 87(2)(g)). **Allegation P, Abuse of Authority:** § 87(2)(g). Simultaneously, at the front of the property, while arresting § 87(2)(b), officers allegedly took § 87(2)(b) to the ground and pushed her against a car (**Allegation Q, Force:** § 87(2)(g)). An officer also allegedly used pepper spray against § 87(2)(b) during her arrest (**Allegation R, Force:** § 87(2)(g)).

Video footage of this incident was provided by § 87(2)(b) [BR 32-36]. § 87(2)(b) and § 87(2)(b) were all arrested for allegedly operating an unlicensed bottle club. § 87(2)(b) was arrested for resisting arrest, obstructing government administration, and disorderly conduct.

Body worn camera (BWC) footage was obtained for the following officers, all from the 67th Precinct: PO Mansoor Ali; PO Amine Azeddine; Sgt. Chau; PO Daniel Collura; Sgt. Robert Falcone; PO Delio Fernandez; PO Denis Gamez; PO Ihab Ginem; PO Christopher Goetz; PO Deirdre Kelleher; PO Ricardo Martinez; PO Trevor Neal; PO Nemeth; PO Pedro Ruiz; PO Sachi Singh; Lt. Spagnuolo; and PO Vanbrakle [BR 7-27].

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Alan Chau entered § 87(2)(b) in Brooklyn.

Allegation (B) Discourtesy: Officers spoke discourteously to individuals.

Allegation (C) Force: Officers used physical force against individuals.

Allegation (D) Abuse of Authority: An officer threatened to arrest § 87(2)(b)

It is undisputed that Sgt. Chau and other officers from the 67th Precinct entered the backyard of § 87(2)(b).

§ 87(2)(b) provided verified testimony to the CCRB and stated that the party at § 87(2)(b) hosted by § 87(2)(b) began at approximately 6:00 PM on September 1, 2018 [BR 06]. Food and alcohol were served, but it was served for free and was not being sold. At approximately 4:00 AM, on September 2, 2018, § 87(2)(b) heard § 87(2)(b) tell the DJ to turn off the music, after which approximately 20-30 officers entered the backyard. § 87(2)(b) noted that entry into the backyard requires entry through two gates, both of which were closed at the time [BR 96]. Officers then told the guests to leave. Some guests were spending the night at the location and would not leave, and officers began pushing them to make them leave the property. § 87(2)(b) did not testify to hearing any officers tell civilians to “get the fuck out” of the property. § 87(2)(b) was later arrested and noted that while at the stationhouse, Sgt. Chau showed her a flyer for the party and said that she was the woman depicted on the flyer, which § 87(2)(b) denied. § 87(2)(b) was unable to describe the flyer any further.

§ 87(2)(b), § 87(2)(g) and § 87(2)(b) hosted the party, which was attended by approximately 100 guests. Also present was an unidentified security guard. Just before 4:00 AM, the security guard told § 87(2)(b) that four officers had arrived, and § 87(2)(b) turned off the music. Shortly thereafter, over 30 officers entered the backyard and told guests to leave.

§ 87(2)(b), § 87(2)(g) Officers entered the backyard and shined their flashlights around the area but did not issue any commands.

§ 87(2)(b)'s niece, § 87(2)(b) also provided sworn testimony to the CCRB [BR 60]. § 87(2)(b), § 87(2)(g)

There was a delay in guests leaving the location, but the crowd, including § 87(2)(b) ultimately began to comply.

In § 87(2)(b) verified testimony to the CCRB, she stated that as officers entered the backyard, they shined their flashlights on the crowd and several of them said, “Get the fuck out,” although § 87(2)(b) did not see the officers who made the statement [BR 42].

In § 87(2)(b)'s verified testimony to the CCRB, he stated that he was inside his home when officers arrived and was alerted by someone else of their arrival [BR 43]. § 87(2)(b) did not hear whether officers said anything as they entered the backyard. § 87(2)(b) noted that none of the alcohol was being sold but that guests had the option of leaving tips for the bartender. Approximately \$80.00 in tips had been collected before the officers arrived. § 87(2)(b) also noted that no one had paid to get into the party.

§ 87(2)(b) testified in a verified statement to the CCRB that officers said nothing as they entered but began telling guests to leave [BR 61]. When additional officers arrived, § 87(2)(b)

§ 87(2)(b) shut the second gate leading into the backyard and stated that it was private property and officers could not enter. An unidentified officer moved § 87(2)(b) hand away, and another officer said that § 87(2)(b) could be arrested for assault, although § 87(2)(b) did not see what the officers looked like because it was dark. § 87(2)(b) did not witness officers have physical contact with other civilians.

§ 87(2)(b)'s brother § 87(2)(b) stated over the phone that two officers arrived at the location and said that the music was too loud [BR 40]. Minutes later, more officers arrived. § 87(2)(b) was ultimately uncooperative with the investigation [BR 53].

§ 87(2)(b) who was also in attendance, stated over the phone that officers entered the property and told guests to leave because the party was over [BR 37]. § 87(2)(b) was ultimately uncooperative with the investigation [BR 52].

§ 87(2)(b) was also present for the incident and stated over the phone that officers entered the location and began telling guests to “shut the fuck up” and “get the fuck out,” [BR 38]. Previously, four to five officers had arrived and said to turn off the music. § 87(2)(b) was ultimately uncooperative with the investigation [BR 51].

Both § 87(2)(b)'s son § 87(2)(b) and her niece § 87(2)(b) stated over the phone that officers entered the backyard but did not make any statements [BR 30, 31]. § 87(2)(b) and § 87(2)(b) were ultimately uncooperative with the investigation [BR 48, 50].

§ 87(2)(b) and § 87(2)(b) all of whom were present at the party, were ultimately uncooperative with the investigation [BR 47, 49, 55, 57, 58]. The CCRB attempted to contact potential witnesses § 87(2)(b) and O’Neal § 87(2)(b) who were ultimately unavailable [BR 54, 56].

Sgt. Chau testified to the CCRB that he responded to the location regarding an illegal social club [BR 44]. Sgt. Chau’s steady assignment was the special operations lieutenant’s assistant but he mainly responded to unlicensed bottle clubs within the 67th Precinct. In the week before the incident date, Sgt. Chau had received an e-mail from intelligence division officers who had learned about the illegal social club at the location on social media advertisements. Another supervisor, whom Sgt. Chau did not remember, called him and asked him to go to the location because the party there was getting out of control and the music was extremely loud. Sgt. Chau did not recall whether any other information was provided about what was happening at the party. Sgt. Chau noted that he could hear the music from one block away when responding to the location. Sgt. Chau decided to conduct a business inspection at the location because he was aware that the party was operating as an illegal social club. He entered the location but did not recall whether he asked for permission to do so from any civilians there. Sgt. Chau noted that he entered the property through a wooden gate but did not recall if he went through a second gate to enter the backyard, where the party was taking place. He did not recall whether the wooden gate was open or closed when he entered, or whether any other officers had entered before him. Sgt. Chau noted that he entered the location because the social media advertisements were public and, as a result Sgt. Chau regarded the event as an illegal social club. Officers issued instructions to the civilians at the location, although Sgt. Chau did not recall what the instructions were but noted that no one cooperated. Sgt. Chau did not hear any officers tell civilians to “get the fuck out” of the location. He did not recall seeing any officers push individuals to get them to leave the party, nor did he recall pushing anyone.

PO Vanbrakle testified to the CCRB that he had heard several radio transmissions about the party throughout the night and that several units had responded [BR 45]. There were approximately 30 officers on the property when PO Vanbrakle arrived, but none had entered the

property as of yet. A sergeant, whom PO Vanbrakle did not recall, informed Sgt. Chau prior to his arrival that alcohol was being illegally sold at the location, although PO Vanbrakle was unaware of how that information was obtained. PO Vanbrakle followed other officers into the backyard. He did not recall who entered the location first but believed it may have been Sgt. Chau or his operator. PO Vanbrakle did not recall any officers, including himself, tell people to “get the fuck out.” PO Vanbrakle did not recall any officer push people out of the location. While some people were leaving, some were lingering at the bar. PO Vanbrakle approached individuals who were refusing to leave and escorted them out by grabbing them gently by their arms but did nothing else to have them leave the location. PO Vanbrakle was shown a photo of § 87(2)(b) but did not recall seeing him at the location.

PO Nemeth testified to the CCRB that an unidentified sergeant had contacted Sgt. Chau after observing an unlicensed social club at the location earlier that night [BR 46]. Sgt. Chau then instructed PO Nemeth and other officers to go to the location and conduct a business inspection. Upon arrival, PO Nemeth saw civilians and officers standing in front of the property but was unaware of whether any officers had entered the backyard already. PO Nemeth and other officers entered the backyard, but he did not recall who entered first. PO Nemeth instructed individuals to leave the location, although only some complied. PO Nemeth did not hear any officers tell civilians to “get the fuck out” of the location and did not see any officers push individuals to get them to leave the backyard. PO Nemeth was shown a photo of § 87(2)(b) but did not recall seeing him at the location.

Lt. Spagnuolo testified that he responded to the location after Sgt. Chau requested additional units over the radio [BR 62]. When he arrived, officers had already entered the backyard of the property. Lt. Spagnuolo did not hear any officers tell individuals to “get the fuck out” of the location and did not see officers push anyone out of the yard. Lt. Spagnuolo did not speak to Sgt. Chau about what was known or observed about the party until they had arrived back at the stationhouse. At that point, Sgt. Chau stated that he had obtained flyers and intelligence regarding the party and showed Lt. Spagnuolo a flyer for the party. Lt. Spagnuolo did not recall what was on the flyer but noted that Sgt. Chau often finds flyers for such parties on social media.

Although BWC footage for 17 officers was obtained, it appears in the footage that significantly more officers responded to the location.

Sgt. Chau’s BWC footage shows him entering the property at 4:11 AM [BR 10]. Allegation A is being pleaded against Sgt. Chau given that he made the decision to conduct the business inspection in the property and that PO Vanbrakle testified that Sgt. Chau entered the backyard first, with other officers following on his instruction.

None of the BWC footage recovered for this incident depicts officers saying, “Get the fuck out,” or pushing individuals out of the property. No officers are seen interacting with § 87(2)(b) as they enter the backyard in any BWC footage [BR 7-27]. The cell phone footage provided by § 87(2)(b) did not show any officers taking these actions [BR 32-36].

An infographic distributed by the NYPD Legal Bureau Civil Enforcement Unit outlining procedure for house party and noise enforcement notes that if an event is open to the public, an officer may enter the event to take enforcement action [BR 63]. An event is considered open to the public if it is advertised as such, if it is inside a commercial establishment that is open for business, or if it is in a yard where access is not controlled. Operations Order 44, Series 2014, which was in effect at the time of this incident, also notes that a determination should be made as to whether the event is open to the public, in which case enforcement action can be taken, or if it

is a private gathering at a person's home [BR 64]. Otherwise, warrantless entry can only be made upon consent or in an emergency.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation (E) Discourtesy: Lieutenant Michael Spagnuolo spoke discourteously to § 87(2)(b)

Allegation (F) Force: An officer used physical force against § 87(2)(b)

Allegation (G) Discourtesy: An officer spoke discourteously to § 87(2)(b)

It is undisputed that Lt. Spagnuolo spoke discourteously to § 87(2)(b). § 87(2)(b) testified that an officer in a § 87(2)(b) shirt approached him and said that he should leave [BR 61]. § 87(2)(b) stated that he was not interfering, and that the property belonged to his cousin. An unknown male officer, whom he did not see, came up behind § 87(2)(b) and grabbed his left hand, pushed it up behind his back until § 87(2)(b) was standing on his toes, and walked § 87(2)(b) to the front of the property. § 87(2)(b) did not recall whether the officer said anything to him as he grabbed him. In the front yard, the officer shoved § 87(2)(b) and said, "Get the fuck out." § 87(2)(b) stumbled but did not fall.

Lt. Spagnuolo's BWC footage shows him interacting with § 87(2)(b) and instructing him to leave the location several times [BR 69]. Lt. Spagnuolo also appears to be speaking with

§ 87(2)(b) in the 30 seconds before audio begins. Lt. Spagnuolo ultimately tells § 87(2)(b) “That’s the final warning. Get the fuck out of the yard now.” An unidentified officer is then seen holding § 87(2)(b) arm and escorting him away from Lt. Spagnuolo, who immediately turns his attention elsewhere. Only the arm and the back of the unidentified officer is visible in the video.

Lt. Spagnuolo testified that in the 30 seconds before the audio of the video begins, § 87(2)(b) was told repeatedly by other officers behind the bar to leave the location but had refused to comply [BR 62]. He noted that he felt that the interaction would become adversarial because § 87(2)(b) had ignored orders from multiple officers, and he activated his BWC. Lt. Spagnuolo also noted that he was there as backup for Sgt. Chau’s team, and that at the time, he was still trying to reach Sgt. Chau and other officers. Lt. Spagnuolo stated that he had been trying to get § 87(2)(b) to leave the location for at least 30-50 seconds and that he used forceful language as a tactic to gain compliance from § 87(2)(b) to avoid arresting him for disobeying a lawful order.

Sgt. Chau, PO Nemeth, and PO Vanbrakle all testified that they did not recall seeing an officer twist § 87(2)(b) arm or push him away from the property, nor did they hear any officer tell § 87(2)(b) to “get the fuck out” of the location in the front yard [BR 44, 45, 46].

None of the BWC footage of this incident shows an officer forcing § 87(2)(b) off the property in the manner described by § 87(2)(b) [BR 7-27]. None of the video provided by § 87(2)(b) shows § 87(2)(b) being escorted off the property [BR 32-36].

NYPD Disciplinary case #2015-15012 notes that discourteous language may be used by officers in the context of dynamic situations in which the officer is attempting to gain control or compliance from civilians [BR 65].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (H) Force: Police Officer John Nemeth used physical force against § 87(2)(b)

§ 87(2)(b)

It is undisputed that PO Nemeth took § 87(2)(b) to the ground.

§ 87(2)(b) testified to the CCRB that § 87(2)(b) had an interaction with an officer, after which her son § 87(2)(b) approached her and said, “Mom, let’s go,” [BR 06]. Approximately six officers took § 87(2)(b) to the ground, during which he said, “I’m not

resisting,” and after which his face and lip were bleeding. § 87(2)(b) did not see how § 87(2)(b) was taken to the ground.

§ 87(2)(b) testified that after she was handcuffed, she heard § 87(2)(b) say, “Stop talking to my mom like that,” [BR 42]. § 87(2)(b) then saw § 87(2)(b) on the floor with a cut on his eye and four officers on top of him. § 87(2)(b) did not see how § 87(2)(b) ended up on the ground or how the officers got on top of him. One of the officers was kneeling with one knee on § 87(2)(b)’s back, and another was pulling his arms behind his back.

In his unverified telephone statement to the CCRB, § 87(2)(b) stated he was approaching § 87(2)(b) and attempting to escort her to the front of the property when an officer, identified by PO Vanbrakle as PO Nemeth, grabbed his right arm and attempted to push him [BR 29]. § 87(2)(b) moved his own shoulder back in response. PO Nemeth grabbed § 87(2)(b) again and attempted to take him to the ground in a swinging motion, subsequently throwing him against a nearby counter, where § 87(2)(b) hit his face. Approximately five to six officers then grabbed § 87(2)(b)’s left arm, his back, and his legs, and together with PO Nemeth brought him to the ground. § 87(2)(b) landed on his face and sustained several cuts.

§ 87(2)(b) and § 87(2)(b) all testified that they did not witness § 87(2)(b) being taken to the ground and his subsequent arrest but heard about it after the fact.

In her unverified telephone statement, § 87(2)(b) stated that she was speaking with officers when she heard banging and saw several lights from the party fall down, then saw officers “beating” § 87(2)(b) who was refusing to be arrested and was slammed to the floor [BR 30]. Officers then struck § 87(2)(b) but § 87(2)(b) could not articulate where on his body they were hitting him or how.

In their unverified telephone statements, both § 87(2)(b) and § 87(2)(b) stated that approximately five to six officers tackled § 87(2)(b) and took him to the ground [BR 28, 31]. § 87(2)(b) stated that the officers pushed § 87(2)(b) and surrounded him, and one officer put a knee in § 87(2)(b)’s back while he was on the ground.

PO Nemeth testified to the CCRB that as he was instructing individuals to leave the location, he saw PO Vanbrakle struggling with § 87(2)(b) but did not see what led up to their interaction [BR 46]. PO Vanbrakle was attempting to gain control of § 87(2)(b)’s arms while § 87(2)(b) tried to pull away and tense his arm. PO Nemeth approached to assist PO Vanbrakle in gaining control of § 87(2)(b)’s arms, moving him approximately 10 feet away from the bar area. § 87(2)(b) proceeded to tense his arms in front of his body. Someone involved in the altercation lost their balance, and all three § 87(2)(b), PO Nemeth, and PO Vanbrakle—fell to the ground. PO Nemeth fell on top of § 87(2)(b) who landed on his front, and PO Vanbrakle fell to § 87(2)(b)’s side. PO Nemeth noted that § 87(2)(b) may have continued to tense his arms once on the ground, but officers were able to place him in handcuffs quickly. PO Nemeth noted that a TRI was prepared for the incident as a forcible takedown due to procedure, as they did end up on the ground with § 87(2)(b) resisting. PO Nemeth did not recall anyone forcibly pushing § 87(2)(b) to the ground.

In PO Nemeth’s BWC footage, several individuals are heard yelling as officers struggle with § 87(2)(b) [BR 71]. PO Nemeth is then seen on the ground with PO Vanbrakle and Lt. Spagnuolo as PO Vanbrakle places § 87(2)(b) in handcuffs. The actions leading up to § 87(2)(b) being taken to the ground are unclear. It is also unclear whether other officers are involved in taking § 87(2)(b) to the ground. Given that PO Vanbrakle identified PO Nemeth

as the officer who took § 87(2)(b) to the ground, as well as the fact that PO Nemeth prepared a TRI regarding the incident, Allegation H is being pleaded against PO Nemeth.

PO Vanbrakle testified that while grabbing individuals by the arms to escort them out of the location, he grabbed § 87(2)(b)'s arm, and § 87(2)(b) became aggressive and pulled his arm away [BR 45]. § 87(2)(b) began flailing his arms and another officer, whom PO Vanbrakle did not recall, attempted to grab him as well, but § 87(2)(b) pulled away. PO Vanbrakle could not explain what happened after but described the events as a "tussle" during which a number of officers, including an unidentified lieutenant, attempted to grab § 87(2)(b) and place his hands behind his back. While § 87(2)(b) was moving his arms around, he intentionally pushed officers away to prevent them from grabbing him and ended up pushing civilians as well. At some point during that time, someone decided to arrest § 87(2)(b). PO Nemeth and another officer took § 87(2)(b) to the ground, and § 87(2)(b) fell to his side and was rolled over to his stomach. § 87(2)(b) continued to resist by placing his hands underneath his body while on the ground. One of the officers was able to place § 87(2)(b)'s hand behind his back and he gave his other hand voluntary after that. Officers were then able to handcuff him. When § 87(2)(b) was taken to the ground, PO Vanbrakle stepped away from the situation, and but later approached again to hold § 87(2)(b)'s arms for handcuffing. PO Vanbrakle and PO Nemeth then lifted § 87(2)(b) off the ground and began escorting him out of the location. § 87(2)(b) sustained a laceration to his eyebrow.

PO Vanbrakle's BWC footage begins after § 87(2)(b) is taken to the ground and does not depict the incident [BR 27]. PO Vanbrakle noted in his testimony that the battery on his BWC was low and that the camera intermittently turned off.

None of the cell phone footage provided by § 87(2)(b) depicts this incident [BR 32-36].

Lt. Spagnuolo testified that at some point, he heard some commotion, after which PO Nemeth took an individual to the ground, and the individual landed on top of Lt. Spagnuolo, knocking him down [BR 62]. Lt. Spagnuolo did not see the physical struggle that led to the individual being taken to the ground but believed that PO Nemeth was attempting to take the individual into custody.

Sgt. Chau testified that he did not recall whether any force was used to gain compliance from anyone at the party, nor whether any civilians were taken to the ground [BR 44].

BWC footage depicting the physical altercation between § 87(2)(b) and officers is inconclusive, as the poor lighting, speed of action, and number of people involved make it unclear precisely what is happening in all videos. PO Ginem and PO Kelleher's BWC footage shows § 87(2)(b) raising his arm after officers tell him to leave, after which an unidentified officer grabs his right arm near the wrist and appears to pull it down [BR 18, 72]. The physical struggle that subsequently ensues is unclear.

TRI report § 87(2)(b) prepared by PO Nemeth regarding this incident notes that § 87(2)(b) tensed his arms and resisted arrest and that PO Nemeth used a forcible takedown [BR 83]. § 87(2)(b)'s arrest photo corroborates that he sustained lacerations to his face as a result of this incident [BR 04].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (I) Force: Sergeant Alan Chau used physical force against § 87(2)(b)

Allegation (J) Abuse of Authority: Sergeant Alan Chau interfered with § 87(2)(b)'s use of a recording device.

It is undisputed that Sgt. Chau instructed an officer to arrest § 87(2)(b) as she was recording video.

§ 87(2)(b) testified to the CCRB that as she was recording video of the incident, Sgt. Chau approached and tried to take her cell phone from her [BR 06]. Sgt. Chau took § 87(2)(b) right hand, in which she was holding the phone, and twisted until she released the phone. § 87(2)(b) locked the phone while it was in Sgt. Chau's hand to preserve her recording, after which Sgt. Chau told PO Kelleher to place § 87(2)(b) in handcuffs.

None of the video footage provided by § 87(2)(b) depicted her interaction with Sgt. Chau [BR 32-36].

Sgt. Chau testified to the CCRB did not recall whether he saw anyone recording video at the location and did not recall interacting personally with § 87(2)(b) at the location [BR 44].

In his BWC footage, Sgt. Chau is seen approaching § 87(2)(b) who is holding up a cell phone and appears to be filming [BR 73]. § 87(2)(b) says, "What are you doing? Don't touch me," to Sgt. Chau, who tells her, "It's closed," and that she has to leave. Sgt. Chau asks if § 87(2)(b) lives at the location and § 87(2)(b) says that she does. Sgt. Chau later tells § 87(2)(b) "You're going to jail too," and appears to hold her right wrist. Sgt. Chau then says, "This is your house, right?" and instructs an unidentified officer to place § 87(2)(b) in handcuffs. § 87(2)(b) is placed under arrest, and she repeatedly tells officers to give her phone back to her.

§ 87(2)(b), § 87(2)(g)

Allegation (K) Force: Police Officer Miguel Vanbrakle used pepper spray against § 87(2)(b)

Allegation (L) Force: Police Officer Miguel Vanbrakle used pepper spray against § 87(2)(b)

Allegation (M) Force: Police Officer Miguel Vanbrakle used pepper spray against § 87(2)(b)

Allegation (N) Force: Police Officer Miguel Vanbrakle used pepper spray against individuals.

It is undisputed that PO Vanbrakle used his pepper spray against individuals during this incident. The rest is in question.

In her unverified telephone statement to the CCRB, § 87(2)(b) stated that while § 87(2)(b) was still on the ground, she and § 87(2)(b) were telling officers that they lived at the location. § 87(2)(b) saw a bright light, and then was sprayed with what she first thought was water but was actually pepper spray [BR 30]. She did not see the officer using the pepper spray, and they did not issue any instructions before spraying.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified to the CCRB that she and the other arrestees were standing in the area while officers removed alcohol from the property [BR 06]. Three officers, including an officer whom she described as a Hispanic or Indian male in his 30s, used pepper spray in a sweeping motion on several people [BR 06]. § 87(2)(b) could not describe the other two officers. No instructions or commands were issued before the pepper spray was used.

PO Vanbrakle testified to the CCRB that as he and PO Nemeth were escorting § 87(2)(b) out of the backyard, they encountered approximately 30-60 people who had been instructed to leave the property but had gathered in the front yard [BR 45]. PO Nemeth yelled to the people to move out of the way as they were making their way further, but PO Vanbrakle did not recall how many times. People then started yelling, screaming and approaching PO Nemeth and PO Vanbrakle. PO Vanbrakle described the situation as dangerous because the officers had a prisoner and numerous upset about the arrest people were approaching them. One male got close to them and was walking very fast. The individual was yelling something, possibly stating “kill him” or “get him.” Since PO Vanbrakle and PO Nemeth were the only ones holding § 87(2)(b) they did not want to get hurt nor did they want § 87(2)(b) to get hurt. Therefore, PO Vanbrakle used his pepper spray towards the individual with his left hand since he was holding § 87(2)(b) with his right hand. PO Vanbrakle was approximately four to seven feet away from the male and the male continued approaching. The pepper spray came out in a steady stream but it aerosolized immediately and started to affect the general area. PO Vanbrakle sprayed in the general direction of the approaching male, but there were approximately 30 people behind the male. Although the male was closest to PO Vanbrakle, he noticed that other people started coughing from the spray. PO Vanbrakle did not give any instructions to the male before using his pepper spray since he did not have enough time. PO Vanbrakle did not have an opportunity to deter the male with his hands either since he was holding § 87(2)(b). PO Vanbrakle could not use hand strikes against the male for the same reason and noted that he needed to consider § 87(2)(b)'s safety well. In that situation, PO Vanbrakle believed that pepper spray would be the most effective tool, causing least amount of harm, and added that he was not Taser trained. PO Vanbrakle prepared a TRI regarding his use of pepper spray. The TRI has been requested by the CCRB and will be added to the case file upon receipt.

PO Vanbrakle's BWC footage begins at a later time and does not depict this incident [BR 27]. None of the video provided by § 87(2)(b) depicts this incident [32-36].

§ 87(2)(g)

As PO Nemeth and PO Vanbrakle were escorting § 87(2)(b) out of the backyard, approximately 50 civilians who had previously been in the backyard of the home were standing in the front yard and began running to the back of the property while screaming. PO Nemeth did not recall what anyone in the crowd was saying. When the crowd was approximately five feet away, PO Vanbrakle used his pepper spray to keep the crowd back, after which he and

PO Nemeth were able to escort § 87(2)(b) to the van. PO Nemeth noted that the pepper spray appeared to be directed at the crowd and not at a particular person. The crowd ultimately dispersed, and none of them made contact with PO Vanbrakle, PO Nemeth, or § 87(2)(b).

PO Nemeth's BWC footage shows him and PO Vanbrakle transporting § 87(2)(b) out of the backyard and to the front of the property [BR 74]. As they approach the first gate, PO Vanbrakle's arm is outstretched, and he is seen deploying his pepper spray. It is unclear how many people are on the other side of the gate or what they are doing.

Lt. Spagnuolo testified that he was unaware of any officers using pepper spray during this incident [BR 62]. Sgt. Chau testified that he did not recall whether pepper spray was used against anyone during this incident [BR 44].

NYPD Patrol Guide Procedure 221-07 outlines the criteria for using pepper spray and notes that it may be deployed to prevent individuals from physically injuring themselves, members of service, or other persons [BR 66].

§ 87(2)(b), § 87(2)(g)

Allegation (O) Abuse of Authority: Sergeant Alan Chau authorized a search of § 87(2)(b) in Brooklyn.

Allegation (P) Abuse of Authority: Sergeant Alan Chau seized § 87(2)(b)'s property.

§ 87(2)(b) testified to the CCRB that she had not witnessed officers searching behind the bar but learned after she was arrested that officers had seized all of the alcohol that had been in the backyard [Br 05].

§ 87(2)(b) and § 87(2)(b) all testified that all of the alcohol at the party was being served for free and that there was no charge for entry or drinks [BR 05, 06, 42, 43, 59, 60, 61]. They did not testify to seeing officers search the bar. As previously stated, § 87(2)(b) added that guests were able to tip the bartender. Approximately \$80 in tips had been collected before the officers arrived. § 87(2)(b), § 87(2)(g) [BR 39]. § 87(2)(b), § 87(2)(b), § 87(2)(b) noted over the phone that officers searched coolers and boxes [BR 37].

Sgt. Chau testified to the CCRB that upon entering the backyard, he observed a bar to the left, behind which stood bartenders who were serving drinks at the time [BR 44]. Sgt. Chau did not recall how many bartenders were there or whether he observed money being exchanged at the bar. He did not recall whether officers established who was the owner of the property, who was in charge of the party, or who the promoter was. He did not recall whether any civilians present provided any information about whether anyone was profiting from the party. Alcohol was seized from the location as arrest evidence for the illegal social club. Sgt. Chau supervised the collection

of the alcohol. He did not recall which officers seized the alcohol but noted that they would have done so under his instructions.

Lt. Spagnuolo testified that when he arrived, officers had already begun securing the bar [BR 62]. Lt. Spagnuolo had no part in the business inspection, which was supervised solely by Sgt. Chau.

PO Vanbrakle testified that as he entered the backyard, he observed several hundred people and an actual bar with coolers, alcohol bottles, and a tip jar set up [BR 45]. There were also glass coolers with sliding doors that can be typically found at convenience stores. PO Vanbrakle did not see any exchange of money for alcohol. After escorting § 87(2)(b) to a police vehicle, PO Vanbrakle returned to the backyard and, with other officers, assisted in performing the New York State Liquor Authority inspection and removing liquor. Sgt. Chau did a business inspection and instructed the officers to “secure” the bar and voucher the alcohol. PO Vanbrakle stated there was a lot of alcohol behind the bar in cases and coolers. Although PO Vanbrakle did not recall looking into any compartments, he stated that generally alcohol would be removed from the coolers and cases and other areas.

PO Nemeth testified that he after § 87(2)(b) was placed in a police van, PO Nemeth remained by the van until he returned to the stationhouse [BR 46].

PO Martinez’s BWC footage shows Sgt. Chau instructing him to “start securing the bar,” [BR 75]. The bar as seen in the video appears to be U-shaped, with a storage shelf holding bottles of liquor under the bar counter. Several coolers are seen on the ground under the shelf. Additionally, a refrigerator with a clear glass door is located against the wall. § 87(2)(g)

PO Martinez retrieves a clear container with cash inside from the floor underneath a shelf in the bar area. PO Martinez takes photos of the container as well as coolers and refrigerators. PO Martinez then begins gathering all of the alcohol in the bar area and is assisted by other officers in removing it from the property.

In their BWC footage, PO Ali, PO Fernandez, and PO Vanbrakle are seen opening compartments and refrigerators to retrieve alcohol and remove it from the property [BR 76, 77, 78].

New York State Alcohol and Beverage Control (ABC) Law §64-b states that it is unlawful to operate a place for profit in which 20 or more people attend for the purposes of consuming alcoholic beverages on the premises unless an appropriate license has first been obtained from the state liquor authority [BR 67].

NYPD Patrol Guide Procedure 218-32 outlines the processing of alcohol seized as evidence in ABC law violations [BR 68].

§ 87(2)(b), § 87(2)(g)

Allegation (Q) Force: Officers used physical force against § 87(2)(b)

Allegation (R) Force: An officer used pepper spray against § 87(2)(b)

§ 87(2)(b) testified to the CCRB that she had spoken with officers regarding medication that § 87(2)(b) would need while in custody and was approaching an officer with the medication [BR 05]. § 87(2)(b) argued with an unidentified officer, and Sgt. Chau instructed officers to arrest her. § 87(2)(b) did not understand why she was being arrested and moved her arms to avoid being handcuffed. Several officers pulled § 87(2)(b)'s arms behind her back and brought her to her knees on the ground. § 87(2)(b) was then lifted up and her chest was pushed against a nearby car, after which she was placed in handcuffs and immediately placed into a police van.

§ 87(2)(b) testified that when Sgt. Chau instructed officers to arrest § 87(2)(b) she began yelling and asking why she was being arrested and put her arms up [BR 61]. § 87(2)(b) was unable to articulate what actions officers took in arresting § 87(2)(b).

§ 87(2)(b) testified that she saw two to four officers push § 87(2)(b) against a car and arrest her but did not see what led up to it or what happened after [BR 60].

§ 87(2)(b) testified that approximately six officers attempted to handcuff § 87(2)(b) and pepper spray was used on her as well [BR 06]. § 87(2)(b) was approximately five steps away from § 87(2)(b) at the time.

§ 87(2)(b) testified that he was in a police van when he saw officers surround § 87(2)(b) but did not see whether officers made contact with her [BR 43]. § 87(2)(b) saw § 87(2)(b)'s arm being pulled back but did not see whether an officer was pulling it. § 87(2)(b) was never on the ground.

§ 87(2)(b) testified that she was in a police van when she saw approximately five to six officers on top of § 87(2)(b) [BR 59]. § 87(2)(b) was unable to articulate what the officers did to § 87(2)(b) and did not recall if § 87(2)(b) was taken to the ground at any point.

§ 87(2)(b) testified that she was inside of a police van when she saw several officers put § 87(2)(b) on the ground in the process of handcuffing her [BR 42]. § 87(2)(b) did not see the officers who did so and did not hear whether they issued any commands to § 87(2)(b) in the process.

Sgt. Chau testified to the CCRB that he did not recall force being used against any individuals on scene [BR 44]. Lt. Spagnuolo testified that he did not recall force being used against any individuals apart from § 87(2)(b) [BR 62].

PO Goetz's BWC footage shows § 87(2)(b) asking officers, "Why'd you spray my eyes?" at 4:21 AM [BR 79].

PO Ali's BWC footage shows § 87(2)(b)'s arrest, which took place at 4:37 AM [BR 80]. In the video, § 87(2)(b) swinging her arms above her head as several officers begin to surround her. Several officers are heard telling § 87(2)(b) to put her arms behind her back. § 87(2)(b) is then seen with her front pressed against a vehicle with several officers behind her. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) is not seen being taken to the ground or having pepper spray used against her at any point during her arrest.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties [BR 85].
- Sgt. Chau has been a member of service for 13 years. He has been a subject in 17 other CCRB cases with 37 other allegations, none of which were substantiated. Sgt. Chau's history involves multiple allegations of entries and searches of premises as well as property seizure.
- Lt. Spagnuolo has been a member of service for 13 years. He has been a subject in one other CCRB case with one allegation, which was not substantiated. § 87(2)(g)
- PO Nemeth has been a member of service for six years. He has been a subject in three other CCRB cases with six other allegations, none of which were substantiated. § 87(2)(g)
- PO Vanbrakle has been a member of service for six years. He has been a subject in 12 other CCRB cases with 32 allegations, none of which were substantiated. PO Vanbrakle's history involves multiple allegations of physical force.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On December 7, 2019, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt [BR 84].
- According to the Office of Court Administration (OCA), § 87(2)(b) and § 87(2)(b) have no criminal convictions in New York [BR 86-95]. None of the criminal cases resulting from this incident are listed in OCA.

Squad No.: 3

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date